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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

MICROSOFT CORPORATION, et al.

Defendant.

Case No. 23-cv-02880-JSC

**DECLARATION OF LEONARD L.  
GORDON IN SUPPORT OF NON-PARTY  
NINTENDO OF AMERICA INC.  
UNOPPOSED MOTION FOR ORDER  
CHANGING TIME**

**DECLARATION OF LEONARD L. GORDON**

I, Leonard L. Gordon, do solemnly declare under penalty of perjury as follows:

1. I am an attorney admitted to and in good standing with the Bar of the State of New York (Bar No. 5031463). I am Partner in the law firm Venable LLP, counsel to Non-Party Nintendo of America, Inc. (“NOA”). The facts contained herein are true, accurate, and complete to the best of my knowledge, which is based on my personal knowledge and on my review of the case file maintained by my office in connection with this matter.

2. I submit this declaration in support of non-party NOA’s Unopposed Motion for Order Changing Time.

3. I understand that the Federal Trade Commission (“FTC”) has filed in the action captioned above its Complaint for a Temporary Restraining Order and Preliminary Injunction.

4. I understand that both Plaintiff and Defendants intend to use certain documents for the upcoming preliminary injunction evidentiary hearing beginning June 22, 2023. Those documents were produced by NOA to the FTC during its investigation review and subsequent Part 3 administrative litigation relating to the proposed acquisition at issue in the above-captioned proceeding. I also understand that NOA produced all of the documents at issue pursuant to FTC confidentiality rules and a protective order.

5. The Court previously instructed Plaintiffs and Defendants to file a Joint Statement by noon on June 20, 2023 that identifies each exhibit they intend to offer at the evidentiary hearing and where on the docket the Court could locate the related declaration and/or statement as required by N.D. Cal. Civil Local Rule 79-5.

6. Plaintiff informed NOA that it would be using NOA’s confidentially designated documents for the upcoming hearing by letter dated June 18, 2023, sent via email at 9:52 pm ET. Two of the documents are deposition transcripts. Plaintiff subsequently confirmed that it intends to introduce the entirety of the transcripts at the evidentiary hearing, not excerpts.

7. Defendants similarly informed NOA that it would be using NOA’s confidentially designated documents for the upcoming hearing on June 19, 2023, via email at 10:15 pm ET.

1 NOA also learned, via the parties' Joint Statement (ECF No. 129) that Defendants intend to  
2 introduce portions of the deposition transcripts of NOA witnesses at the evidentiary hearing.

3 8. Since receipt of Plaintiff's letter and Defendants' email, NOA has been working  
4 expeditiously to review the documents and transcripts at issue and prepare briefing for this  
5 Court.

6 9. The day following receipt of Plaintiff's letter and day of receipt of Defendants'  
7 email, June 19, 2023, was Juneteenth, a federal holiday.

8 10. NOA's key in-house counsel working on this matter are currently traveling  
9 internationally.

10 11. On June 19 and 20, 2023, counsel for NOA conferred with counsel for FTC, who  
11 indicated that they do not oppose NOA's request for a one-day extension to file its  
12 confidentiality statement/declaration as to non-transcript exhibits, as well as NOA's request for a  
13 one-week extension to file its confidentiality statement/declaration as to the transcript exhibits.

14 12. On June 20, 2023, counsel for NOA conferred with counsel for Defendants, who  
15 indicated that they do not oppose NOA's request for a one-day extension to file its  
16 confidentiality statement/declaration as to non-transcript exhibits. As to the deposition  
17 transcripts, Defendant's counsel indicated that it will disclose its deposition designations today,  
18 June 20, 2023, and that will seek Plaintiff's counter-designations by Wednesday, June 21, 2023.  
19 Defendant's counsel agreed to a six-day extension for NOA to file its confidentiality  
20 statement/declaration as to the designated and/or counter-designated portions of the transcripts,  
21 to June 26, 2023, and a seven-day extension for NOA to files its confidentiality  
22 statement/declaration as to the entirety of the transcripts.

23 13. This is non-party NOA's first request for an extension of time. I have no reason  
24 to believe that this request will affect any deadline or hearing date in this action.

25 Executed this 20th day of June 2023 in New York, New York.

26  
27 

28 Leonard L. Gordon